

**MILWAUKIE CITY COUNCIL
REGULAR SESSION
OCTOBER 5, 1999**

The one thousand eight hundred and twenty-fourth meeting of the Milwaukie City Council was called to order by Mayor Tomei at 6:00 p.m. in the City Hall Council Chambers. The following Councilors were present:

Rob Kappa
Mary King

Larry Lancaster
Jeff Marshall

Also present:

Dan Bartlett,
City Manager
Jim Coleman,
City Attorney
Charlene Richards,
Assistant City Manager

Martha Bennett,
Assistant City Manager
Mike Swanson,
Interim Public Works Director

CONSENT AGENDA

It was moved by Councilor Marshall and seconded by Councilor King to approve the Consent Agenda that consisted of:

1. City Council Minutes of September 9 & 21, 1999; and
2. Authorization to Purchase Street Sweeper

Motion passed unanimously.

AUDIENCE PARTICIPATION

None.

PUBLIC HEARING

Consider Zoning Ordinance Section 1500 "Boundary Changes and Establishing Related Fees -- Ordinance and Resolution

Mayor Tomei called the public hearing on file #ZA-99-01 -- Boundary Changes to order at 6:03 p.m.

The purpose of the hearing was to consider an ordinance to adopt a new Zoning Ordinance section relating to boundary changes affecting the City of Milwaukie. This was a legislative decision by the City Council to carry out the provisions of ORS 268.354 and Metro Code Chapter 3.09 by adopting an approval process and appeal procedure. **Mayor Tomei** reviewed the conduct of the hearing.

Staff Report: **Swanson** presented the staff report in which the Council was asked to adopt Zoning Ordinance Section 1500 "Boundary Changes" and a resolution establishing fees for annexation, expedited annexation, and other boundary changes.

The state legislature adopted SB 947 which eliminated the Portland Area Boundary Commission and directed Metro to develop a process. The Metro Policy Advisory Committee (MPAC) discussed the expedited annexation process in depth, particularly the amount of time allowed for notification. The result was that the Metro Council did adopt an ordinance creating an expedited process mostly for the purpose of single lot, non-controversial boundary changes. The proposed ordinance before the City Council was the City's attempt to codify its process around the Metro ordinance.

Boundary changes would go through the normal quasi-judicial notification procedure. Boundary, Comprehensive Plan, and Zoning Ordinance changes would go through the Planning Commission and the City Council with the exception of those applications submitted under the expedited process.

The expedited annexation process would be initiated with the written consent of 100% of the property owners and at least 50% of the electors residing in the area to be annexed. In most cases, the boundary change would be requested when property owners needed immediate access to City services such as sewer and water due to a failure of their existing systems. The expedited boundary change proposal is considered by the City Council without a public hearing, and the decision is considered final. **Swanson** said it was important to remember that annexations are not a matter of right but one of sovereignty.

The Planning Commission was concerned that the expedited process did not include a hearing or some type of Planning Commission review. The group also advocated using the same notification requirements as a major quasi-judicial land use application. It elected to revise the automatic rezoning provision and delete reference to R-15 and R-20. He indicated those areas within the Milwaukie Urban Growth Boundary with that zoning designation.

Staff continued to recommend the expedited process because there are property owners who need to hook up to specific City services quickly. Most of these boundary changes of this nature are non-controversial. The expedited process does include a pre-application conference and requires certain required materials be submitted. The process is expedited in that it eliminates the Planning Commission step.

Ken Martin, Metro, spoke to his experience with boundary changes and more specifically to the expedited process. The Boundary Commission conducted a twenty-five day expedited process, which was requested by the applicant, that

was mostly administrative. Notices were sent to affected units of government and Boundary Commissioners with complimentary copies going to the community.

The proposed process before the City Council has a number of safeguards including the pre-application conference and extensive notice requirements to all property owners. Few people attended the Boundary Commission hearings because there was normally nothing controversial about the application. Most of them involved access to specific urban services. From his experience, **Martin** said the expedited process was virtually never abused, and, if there was controversy, the application would be called up.

Councilor Lancaster commented on the issue of the notice area and asked how many additional houses would receive notice if the area were increased from 250 feet to 400 feet. He asked the rationale for the Planning Commission's decision.

Swanson responded that the 400 foot notice area was the distance used in a major quasi-judicial land use application. The Planning Commission was interested in establishing some kind of hearing process and ensuring adequate notification.

Martin added, that even 100 feet in an R-10 subdivision could include hundreds of notices. He has worked on about twenty-five proposals since beginning the new process, and even using a 100 foot radius, there is little response to the notices. He doubts the larger area would be productive.

Councilor Kappa asked if the additional number of notices would slow the process.

Swanson believed that it would. The question is whether or not to have an expedited process.

Councilor King was concerned that perhaps one of the few large, remaining, unsewered lots in the City could go through the expedited process, and then the owner could put more houses on it without going through the process.

Swanson said it would depend on the zoning design and referred to the chart that approximated County and City zoning on a one-to-one exchange.

Mayor Tomei re-phrased it by saying that a property owner would have no greater rights in the City than he or she would have in the County.

Coleman added that an applicant would have to go through the full process if he wanted to do something other than the exchange on Table 1.

Swanson explained that the City Council has the ability to deny the annexation and prevent it from happening.

Councilor Kappa asked if someone might be able to more easily circumvent the system through the expedited process.

Swanson responded that essentially only the forum for the change is different. The applicant would have to go through either the City or the County process. A zone change is not granted through the expedited process.

Councilor Marshall was concerned about cost recovery for annexed property and the decision to set fees at 60% of the cost.

Swanson said the annexation only gives the property owner the right to seek the needed service. The cost of a sewer lateral, for instance, would still have to be paid by the property owner.

Councilor Lancaster asked how the City arrived at a 60% recovery of its costs.

Bartlett said the percentage was arrived at by weighing the public and private benefit of an improvement. This was the previous Council's decision, but the current Council is not bound by it.

Councilor Marshall noted there was a blanket annexation fee whether the person was making an application for one parcel or sixteen.

Bartlett said that was a correct statement as long as the parcels were contiguous. He recommended looking at the fees in the spring if the City Council felt there were equity issues.

Councilor Marshall said, when someone constructs a single-family residence in Milwaukie, there is a systems development charge (SDC). He was concerned that annexed, existing single and multi-family residences would not have to pay the SDCs.

Bartlett said SDCs are charged at the time the building permit is issued, not at the time the land is brought into the City. He pointed out the Dual Interest Areas A & B. The incentive to property owners at this time to connect to sewer is that banks will not lend money on unsewered property. The area between Linwood and Stanley Avenues is a health hazard, and, without major financing, the City can only annex one or two parcels at a time.

Councilor Lancaster commented that an entire block could be put on a single application. He asked if there was any potential liability for the City.

Bartlett said, if the City itself was looking to buy property, it would go through due diligence, but the City would have no liability for a failing septic on privately owned property. The laws are designed to help eliminate health hazards and bring properties up to standards. At this time there are several residences and two businesses that have expressed an interest in the expedited process.

Councilor Kappa asked Bartlett if he anticipated other property owners to follow suit.

Bartlett said he did not. Ten years ago there was a plan along with funding from other agencies, but, for certain reasons, those plans did not come together. Homeowners are expected to pay the cost of the sewer lateral along with decommissioning their septic tanks.

Councilor Marshall returned to the SDC issue. He asked if there was a reason the City was not charging an SDC for annexation. The City has a significant storm water system deficiency, and there is no real funding source.

Bartlett said when the property owner comes into the office for a permit, he will be charged the SDCs for sewer, storm water, transportation, and parks. The City would likely be challenged if it charged a water SDC because most of the homes in the annexation area are served by Clackamas River Water. The goal would be to maximize existing infrastructure.

Coleman explained a property owner will be charged at the time a building permit application is filed. If the owner or resident of an existing house never applies for a building permit, no SDC will be charged. Annexation is not an event designed to trigger an SDC. It is a growth-related activity. State statute lays out the parameters of systems development charges.

Councilor Marshall pointed out that an existing dwelling coming into the City does impact the community.

Coleman said, if directed, he could research some other kind of fee.

Councilor Kappa asked of the County provided road improvement funds.

Bartlett said there is an urban growth management agreement to bring streets up to standards. Cities also receive state revenue sharing on a per capita basis. The resident will then also pay the full property tax rate unless there is another type of negotiated agreement such as phased value.

Correspondence: None.

Audience Testimony: **Donald Hammang**, Planning Commission Chair, 11104 SE Home Avenue. For clarification, he stated the Planning Commission had not

seen the zoning map Swanson referred to when pointing out the R-15 and R-20 designations. The Commission wanted to carry the idea forward that there should be a public review of actions that may have social or fiscal impacts. The root of good governance is a system of checks and balances, and the Commission felt obligated to let the City Council know its feelings about public oversight.

Councilor Kappa asked why the Planning Commission had not see the map.

Bennett said those zones had not been identified as an issue until after the Planning Commission met.

Close Hearing: **Mayor Tomei** closed the public testimony portion of the hearing on the new Zoning Ordinance Section 1500 at 7:00 p.m.

Councilor Lancaster took the comments about good governance to heart, and this Council was looking to restore citizens' faith. His main concern was adequate notice.

Councilor King felt that too much notification was preferable since communication was one of the Council's top goals. People need to know about changes taking place in their neighborhoods and suggested changing the notification area from 250 feet to 400 feet.

Councilor Kappa understood the Planning Commission's concerns about notification, but this ordinance was about providing urban services, not about development. He was concerned, however, that the Commission had not seen the map.

Councilor Marshall believed the Planning Commission's proposals reflected the community and its citizens. He did not understand the need for an expedited process since septic do not fail overnight.

Councilor King suggested the City Council adopt the Planning Commission's recommendation and review the process in one year.

Mayor Tomei had concerns about the additional City Council and staff resources that might result from the Commission's recommendation. She supported the Council's making the decision and the 150 foot radius notification area.

Councilor Marshall suggested the Planning Commission review the applications. He definitely wanted to move toward 100% fee recovery and to consider how new dwellings impact the existing community. He wanted the City to consider adequate fees, so citizens do not have to absorb the cost of providing additional services to a newly annexed parcel or area. He also recommended

the City consider a course that would include annexing commercial-industrial property to provide a net benefit in the amount of money recovered.

Bartlett said the Comprehensive Plan has language regarding short-term subsidy and long-term recovery. The Urban Growth Management Agreement speaks to logical boundaries rather than only picking the best areas for annexation. He pointed out the Dual Interest Areas A & B would offset each other in required levels of service. Many local commercial-industrial areas are under tax increment financing (TIF) districts, so the City would not enjoy full value until the districts were extinguished. He suggested that staff might look at current TIF laws to determine if it was feasible to look at certain areas.

Councilor Kappa urged that the City develop a strategic annexation plan. The tax base need to be broadened before raising the tax rate.

Councilor Marshall referred to Table 1 -- Zoning and Land Use Designations for Boundary Changes and recommended that County R-10 remain City R-10 even if the parcel is adjacent to City R-7. He did not feel it was appropriate to change zoning and impact the neighborhood.

Swanson understood the Planning Director and City Attorney developed the table, and it referred only to the expedited process. He believed the rationale was for consistency. The applicant would not be required to change the zoning.

Councilor King noted that County R-8.5 would be designated City R-7.

Bartlett explained that Milwaukie does not have an R-8.5 zoning designation.

Councilor Lancaster saw no problems associated with R-10 islands in R-7 neighborhoods.

Bennett said mixed zoning can create problems in enforcing codes such as parking and setbacks. People can develop at a larger lot size, but the purpose for the proposal was to provide regulatory consistency.

Councilor Kappa saw potential for conflict within a neighborhood.

Councilor Lancaster was willing to take on a little more work to preserve larger lots.

Councilor Marshall made the recommendation to ensure that Milwaukie would be a 2040 community with a choice of housing types.

Councilor King asked if the expedited process could go through the Planning Commission.

Coleman stated the City Council would have to act on the annexation somehow and suggested the option of dropping the expedited process.

Mayor Tomei said people do find themselves in emergency situations and supported reducing the amount of red tape by adopting the expedited process.

It was moved by Mayor Tomei and seconded by Councilor Kappa to read the ordinance adding section 1500, Boundary Changes for the first time by title only.

Councilor Lancaster made a friendly amendment to delete the automatic reduction of County R-10 to City R-7. **Mayor Tomei and Councilor Kappa accepted the amendment.**

Councilor Marshall asked how many days difference there was between the expedited and the standard application.

Bennett responded the expedited application would take about half the time or thirty to forty-five days versus ninety days. The standard application is also twice as expensive.

Councilor Lancaster understood there were safeguards in the expedited process.

Bennett said that was correct, and staff understands the desire for caution. The City Council has the power to send the application back and reject the annexation.

Councilor Kappa added that other applications such as lot line adjustments must go through the entire process. He did not perceive this new code section as an emotional livability issue.

Councilor King made a friendly amendment to the motion to increase the notice area to 400 feet to be consistent with the major quasi-judicial requirements. **Mayor Tomei and Councilor Kappa accepted the friendly amendment.**

Motion passed unanimously. The ordinance was read for the first time by title only.

It was moved by Mayor Tomei and seconded by Councilor King to read the ordinance adding section 1500, Boundary Changes as amended for the second time by title only. Motion passed unanimously. The ordinance was read for the second time by title only.

It was moved by Mayor Tomei and seconded by Councilor Kappa to adopt the ordinance adding section 1500, Boundary Changes as amended. Motion passed unanimously.

ORDINANCE NO. 1862:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADDING SECTION 1500 (BOUNDARY CHANGES) TO THE MILWAUKIE ZONING ORDINANCE, IN ORDER TO IMPLEMENT THE REQUIREMENTS AND PROCEDURES FOR BOUNDARY CHANGES AFFECTING THE CITY OF MILWAUKIE, PURSUANT TO CHAPTER 3.09 OF THE METRO CODE. (ZA-99-01)

It was moved by Councilor Marshall and seconded by Mayor Tomei to adopt the resolution setting fees for boundary change applications to recover 100% of the estimated cost and to adjust the fee accordingly. Motion passed unanimously.

RESOLUTION NO. 37-1999:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, CRATING AN ANNEXATION APPLICATION FEE, EXPEDITED ANNEXATION APPLICATION FEE AND OTHER BOUNDARY CHANGE APPLICATIONS.

**Parks, Open Spaces, and Trails (POST) Refinement Process --
Neighborhood and Riverfront Parks -- Resolution**

Mayor Tomei opened the public hearing on adoption of the Parks, Open Spaces, and Trials Refinement Process to order at 7:45 p.m.

The purpose of the hearing was to consider Target Area Map 1 relating to neighborhood and riverfront areas. **Mayor Tomei** reviewed the conduct of the hearing.

Staff Report: **Richards** presented the staff report in which the City Council was requested to adopt a resolution amending resolution 21-1999 by adopting a target area map as Map 1 of the Refinement Process of the Parks, Open Spaces, and Trails Acquisition Program Implementation Work Plan.

The City Council and the Parks and Recreation Board have been working on this expedited process for over a year. The acquisition program set forth ways to quickly acquire land, and the refinement process is part of that program. She discussed the community outreach process. Several under-served areas were

identified in the needs assessment: Hector Campbell, Lewelling, Ardenwald west of 32nd Avenue, and south of Lake Road. City staff will also continue to look in the downtown/riverfront area. Staff requested that Council adopt the Target Map with discussions of particular tax lots taking place in executive session. Staff can proceed with acquisition within given parameters if it finds a willing seller.

Correspondence: None.

Audience Testimony: None.

Staff Comments: None.

Questions of Clarification: None.

Close Hearing: **Mayor Tomei** closed the public testimony portion of the hearing on the Parks, Open Spaces, and Trails Refinement Process at 7:50 p.m.

It was moved by Councilor Kappa and seconded by Councilor King to adopt the resolution adopting Map 1 -- Neighborhood and Riverfront Parks Target areas. Motion passed unanimously.

RESOLUTION NO. 38-1999:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILWAUKIE, OREGON, ADOPTING THE ATTACHED TARGET AREA MAP AS MAP 1 -- NEIGHBORHOOD AND RIVERFRONT PARKS TARGET AREAS.

OTHER BUSINESS

Revised Classification: Information Systems Analyst

Richards presented the staff report in which the City Council was requested to authorize the City Manager to amend the MEA/AFSCME agreement to add the Information Systems Analyst classification to the salary schedule at Range 15.0 for Fiscal Year 1999/2000.

Staff determined during the FY 1999 - 2000 budget development process that it would be more cost effective to hire personnel rather than to continue the practice of contracting for information services. The bargaining unit supported the classification and accepted the salary range which is similar to the senior accountant and other top level technical positions.

It was moved by Councilor Kappa and seconded by Councilor Lancaster to authorize the City Manager to amend the MEA/AFSCME agreement to add to Information Systems Analyst classification to the salary schedule at Range 15.0 for Fiscal Year 1999/2000. Motion passed unanimously.

Repeal a Portion of the City's Business License Code and Amend Business License Tax Code

Councilor Kappa removed himself from the discussion and vote.

Bennett presented the staff report in which the City Council was requested to conduct a second reading and adoption of the ordinance repealing Municipal Code Section 5.04, the business license code and amend section 5.08, the business tax code. The new terminology would be "business registration."

It was moved by Councilor King and seconded by Mayor Tomei to read the ordinance repealing section Municipal Code Section 5.04, the business license code and amend section 5.08, the business tax code for the second time by title only. Motion passed 4 - 0 - 1 with the following vote: Mayor Tomei, Councilor King, Councilor Lancaster, and Councilor Marshall aye; no nays; Councilor Kappa abstained. The ordinance was read for the second time by title only.

It was moved by Mayor Tomei and seconded by Councilor King to adopt the ordinance repealing section Municipal Code Section 5.04, the business license code and amend section 5.08, the business tax code. Motion passed 4 - 0 - 1 with the following vote: Mayor Tomei, Councilor King, Councilor Lancaster and Councilor Marshall aye; no nays; Councilor Kappa abstained.

ORDINANCE NO. 1863:

AN ORDINANCE REPEALING CHAPTER 5.04, BUSINESS LICENSES GENERALLY, AND AMENDING CHAPTER 5.08, BUSINESS TAXES GENERALLY, OF THE MILWAUKIE MUNICIPAL CODE.

INFORMATION

1. It was City Council concurrence that Mayor Tomei would be the City's voting representative at the League of Oregon Cities Conference and Councilor King would be the alternate.
2. **Councilor King** understood from Dave Green that there was interest in installing a microwave tower in the wetland, and **Bartlett** discussed the process and review for this type of request.

3. **Mayor Tomei** said the Metro Growth Management Committee has agreed to re-designate Milwaukie from a Regional Center to a Town Center.
4. **Councilor Marshall** requested an unstructured work session to discuss annexation generally. **Bartlett** said that could be scheduled in early 2000.

Mayor Tomei announced an executive session under ORS 192.660 (1)(e) to discuss real property acquisition.

ADJOURNMENT

It was moved by Councilor Kappa and seconded by Councilor Lancaster to adjourn the meeting. Motion passed unanimously.

Mayor Tomei adjourned the meeting at 8:15 p.m.

Pat DuVal
Pat DuVal, Recorder